United Nations A/AC.109/2007/6

General Assembly

Distr.: General
9 March 2007

Original: English

Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Pitcairn

Working paper prepared by the Secretariat

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07-26546 (E) 280307

I. Background information

1. Pitcairn[1] is a Non-Self-Governing Territory administered by the United Kingdom of Great Britain and Northern Ireland. The Territory is located midway between Australia and the continent of South America at 25°S and 130°W. It comprises four islands in the eastern Pacific Ocean: Pitcairn, the only inhabited island (named after Robert Pitcairn, a midshipman who sighted it in 1767), Henderson, Ducie and Oeno. The total area of the Territory is 35.5 sq km while that of Pitcairn is 4.35 sq km.[2]

2. Access to Pitcairn is possible only by sea, usually by container vessels plying between New Zealand and the United Kingdom or from the eastern seaboard of the United States or the Caribbean, via the Panama Canal. A number of cruise ships also call at Pitcairn. Charter boats from Mangareva in French Polynesia are increasingly being given access to the Island. Ships visiting the Island remain at anchor some distance from the shoreline and visitors are ferried to the Island in longboats.

3. The terrain in Pitcairn is of rugged volcanic formation, with a rocky coastline and cliffs lining nearly the entire perimeter of the island, giving no easy access from the sea. Although canoes can be launched in many places, Bounty Bay and the Tedside landing are the only two places on the island that offer a reasonably safe landing. Pitcairn enjoys a subtropical climate. Mean monthly temperatures vary from around 19°C in August to 24°C in February.

4. Pitcairn was uninhabited when castaways from HMS Bounty (9 mutineers and 18 Polynesians) arrived there in 1790. Today, Pitcairn is inhabited partly by their descendants. Its population has been declining steadily since 1937, when it was approximately 200. As of February 2007 the total population of the Territory was 47. It is common for young people to leave the Territory at the age of 15 (usually in their third year of secondary schooling) to attend secondary school in New Zealand. The continuing exodus of young people has been a concern to the Islanders for many years. The entire population lives in Adamstown, the only settlement in Pitcairn.

5. The official languages are English and Pitkern, which is a mixture of eighteenth century English and Tahitian.

II. Constitutional, political and legal issues

6. The Pitcairn Order 1970 and the Pitcairn Royal Instructions 1970 are, in effect, the Constitution of Pitcairn. These instruments established the office of Governor and regulate his powers and duties. The Governor is appointed by the Queen, acting on the advice of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom, to whom he is accountable. In practice, the High Commissioner of the United Kingdom to New Zealand is appointed concurrently as Governor of

[1] The information contained in the present working paper has been derived from published sources, including those of the territorial Government, and from information transmitted to the Secretary-General by the administering Power under Article 73 e of the Charter of the United Nations.

[2] The Far East and Australasia, 2005, Europa Publications.

Pitcairn and the responsibility for the administration of the Island is accordingly vested in him. The current Governor of Pitcairn is Richard Fell.

7. Under the 1970 Order, the Governor has legislative authority for Pitcairn and is empowered to formulate laws on any subject. However, according to the administering Power, the Royal Instructions require him to obtain the prior approval of the Secretary of State for the enactment of certain classes of laws, including laws which appear to him to be inconsistent with the United Kingdom's treaty obligations and laws which discriminate between different communities or religions. Laws enacted by the Governor are styled ordinances. Formally, all ordinances are subject to disallowance by the Queen, on the advice of the Secretary of State. The Government of the United Kingdom retains the power to legislate directly for Pitcairn by an Act of Parliament or an Order in Council. It is under his legislative power that the Governor establishes courts for Pitcairn and regulates their jurisdiction and procedures. The 1970 Order also vests in the Governor the power to appoint persons to offices in the public service and to remove or discipline them. In response to requests from the Island for closer integration with the Governor's Office, a Governor's Representative (a member of the British Diplomatic Service) has been stationed on the Island since early 2003 to provide a direct line of communication to and from the Governor's Office.

8. The major part of the general administration of Pitcairn is conducted from the Pitcairn Islands Office in Auckland, New Zealand, which is run by a Commissioner appointed by the Governor. Pitcairn Islanders manage their internal affairs through the Island Council, which was established by the Local Government Ordinance. The Ordinance conferred on the Council the duty to provide for the enforcement of the laws of Pitcairn and empowered it to make regulations for the good administration of Pitcairn, the maintenance of peace, order and public safety and the social and economic advancement of the Islanders.

9. The Council is required to meet at least once a month. It consists of 10 members: the Island Mayor, who is elected every three years (elections took place for the first time in 1999 when the century-old practice of naming a magistrate to head the local government ended); the Chairman of the Internal Committee, who is elected annually; four Councillors, who are also elected annually; the Island Secretary, who is a public officer and serves on the Council ex officio; one nominated member, who is appointed annually by the Governor; and two advisory (non-voting) members, one of whom is appointed annually by the other members of the Council.

10. The decisions of the Island Council are implemented by the Internal Committee, whose principal function is to organize and implement the public works programme, for which all adult and able-bodied Pitcairn Islanders are responsible. The Committee comprises the Chairman and such other persons (not being members of the Council or public officers) as the Council, with the Governor's approval, may appoint.

11. For people not native to Pitcairn, three years of residence and being 18 years old are required to vote. Candidates for the posts of Mayor and Councillors must be at least 21 years of age and native to Pitcairn or resident on the Island for the previous three years. The Island Secretary prepares the register of voters in October of each year, and elections are held during the first two weeks in December. The Island Secretary and other non-elected officials of the local government, including

the Postmaster, Communications Officer, Island Auditor and Police Officer, are appointed by the Governor, invariably after consultation with the Council.

12. An Island Magistrate is appointed from among the residents of Pitcairn. Other magistrates, legally qualified in a Commonwealth country, are appointed to preside over the Court in matters outside the powers of the Island Magistrate. The jurisdiction of the Court is limited to offences triable summarily, committal proceedings and certain inquiries together with civil litigation up to a prescribed level. There is a right of appeal from the Court to the Supreme Court of Pitcairn, which is a superior Court of record and has jurisdiction in criminal and civil cases outside the competence of the Magistrate's Court. The Supreme Court is constituted by a judge, the Chief Justice or one of several puisne judges, with or without assessors. Further rights of appeal may be made to the Pitcairn Court of Appeal, comprising three judges, and the Privy Council.

13. According to the administering Power, the Pitcairn Courts have jurisdiction in relation to human rights arising out of the laws in force in the Islands. The judiciary and the Governor have a corresponding jurisdiction to uphold and enforce human rights in the Islands. Although the European Convention on Human Rights has not been extended to Pitcairn under article 63 of the Convention, the Pitcairn Court of Appeal has held that basic human rights apply to Pitcairn despite the fact that the Convention does not there apply.

14. Any violation of the civil or political rights of any person is justiciable by means of injunction and damages that may be awarded by the Supreme Court. That court has inherent power and jurisdiction to award compensatory damages and, in certain cases, punitive damages, as well as to give binding directions to secure the rehabilitation of such persons. In the circumstances of Pitcairn, the Governor, as holder of the highest executive office, and the Chief Justice, as head of the judiciary, are responsible within their respective spheres of authority for overseeing the implementation of human rights on Pitcairn.

15. The administering Power has further noted that the laws in force in the Territory, including those relating to human rights, are published by the Government of the United Kingdom and the Pitcairn Administration and are readily available to all on the Island through the Island Secretary's office. The Territory's reports to international bodies are prepared by the Government of the United Kingdom, drawing on information provided by the Governor and the Commissioner.

III. Economy

16. The principal sources of income for Pitcairn's public economy are sales of stamps, Internet domain names and revenue from interest and dividends. In 2005-2006 expenditure was roughly NZ$ 2.2 million and income for the year NZ$ 210,000. Pitcairn's reserves were exhausted in late 2003 and the island now receives budgetary assistance from the United Kingdom Department for International Development. Budgetary aid of NZ$ 1.7 million was provided in 2005-2006 to help meet the operating budget deficit. Significant development funds have been allocated for infrastructure projects by the Department for International Development and the European Union. In 2005 projects were completed by the United Kingdom Government to repair and upgrade the island's jetty and slipway and construct a sealed road — Pitcairn's first — from the landing area to the

Adamstown settlement. A new museum was also constructed to provide a focal point for the community and for tourist visitors

17. The private economy of Pitcairn is based on subsistence gardening and fishing and the sale of handicrafts, mainly to passing ships. The fertile soil of the valleys produces a wide variety of fruits and vegetables. Fish is the main source of protein in the Islanders' diet.

18. Pitcairn exports fruits, vegetables, handicrafts and high quality honey and imports, mostly from New Zealand, fuel oil, machinery, building materials, cereals, milk, flour and other foodstuffs. The latter are ordered several months in advance and are obtainable through a cooperative store, established in 1967. It is hoped that an increase in Pitcairn's food export business will add substantially to the Territory's economy. Pitcairn's products are sold in New Zealand, Japan and the United States of America. The Pitcairn Island Producers' Cooperative, established in 1999, promotes and coordinates the distribution of products produced by its members. A number of Pitcairn items are available directly from Pitcairn through the Internet. Given the remoteness of Pitcairn, customers must allow up to six months or more for delivery and, when paying for orders by cheque, customers are advised to leave their cheques updated because of the long time it takes to process them.

19. Information on land distribution issues is provided in the 2005 working paper (A/AC.109/2005/10).

20. In September 2006 Pitcairn received a new communications system funded by the United Kingdom Government. This system provided the Island with telephones in all homes, a stable Internet system, a limited television service and videoconferencing capabilities to allow greater contact with the Governor's and Commissioner's Offices in New Zealand and to provide telemedicine and educational services. A range of additional infrastructure projects is now being planned for 2007. These include the construction of a breakwater and the provision of 24-hour electricity using wind power. Currently, diesel-driven generators provide 240-volt electric power for approximately four hours each evening and for two hours each morning. Also, a new freight shipping route via French Polynesia has been opened, and it is hoped that a regular passenger service will be added in mid-2007.

21. Internet users worldwide can acquire a ".pn" suffix that is permanently awarded to Pitcairn. The fees for the acquisition of a ".pn" domain are US$ 200 for the first registration, which covers two years, and US$ 100 for the annual renewal.

IV. Social and educational conditions

22. The population of the Territory is self-employed, but allowances and wages are paid to members of the community who participate in local government activities or perform communal services. Public work, which is required by law of all men and women between 15 and 65 years of age, is partly a relic of the society created by the mutineers and partly a necessity born of the basically tax-free economy. The most essential of the traditional public duties are concerned with Bounty Bay and the maintenance of the public boats. Installations in the Bay are provided mainly from general revenue and grants from the United Kingdom. The only jobs in the Territory are government posts, which are normally reserved for permanent residents of

Pitcairn. There are no banking facilities, but undated personal cheques and traveller's cheques may be cashed at the Island Secretary's office.

23. Education is free and compulsory for all children between 5 and 15 years of age. Pitcairn's only school, which was completely rebuilt in 2006, is operated and financed by the Government. Instruction is in English and is based on the New Zealand standard curriculum. The Education Officer, who is also the editor of the *Pitcairn Miscellany*, the Territory's only newspaper, is a trained teacher recruited from New Zealand, usually for a one-year term. As a point of practicality, post-primary education is conducted at the school by correspondence courses arranged through the New Zealand Department of Education. Overseas secondary education is encouraged by the grant of bursaries and a number of students have received secondary education in New Zealand at the expense of the Government of Pitcairn. In November 2006, following a meeting of the Overseas Territories Consultative Council, the United Kingdom announced that citizens from the Overseas Territories would benefit beginning in 2007 from the home student fee rate at English universities.[3]

24. The Seventh Day Adventist Church is the only Church on the Island. A pastor from New Zealand is currently stationed on the Island.

25. The Pitcairn Island Health Centre, completed in 1997, was funded by the United Kingdom Government Overseas Development Administration. It has an examination room, a dental clinic, an X-ray room and a two-bed ward for overnight patients. A general practitioner, recruited from New Zealand, is stationed on the Island on a three-month rotation, assisted by an assistant nurse and a local dental officer, who also acts as an X-ray technician. The Government has also funded a social welfare programme, which ensures the presence of two social workers on the Island at all times.

26. Built with a grant from the Government of the United Kingdom, Pitcairn Island has a new museum building. Artefacts on display include stone tools made by Polynesians prior to the arrival of the mutineers as well as cannonballs, an anchor and a swivel gun from the Bounty.[4]

27. According to the administering Power, there is ongoing public interest in certain cases of serious sexual offences against young persons on Pitcairn. These include numerous criminal charges of rape and indecent assault. Thirteen men were charged with a total of 96 offences. The trials of the seven on-island defendants were held on Pitcairn from September to November 2004: six of them, including individuals holding public office, were convicted on a number of counts. Four men received custodial sentences.

28. The convicted men appealed to the Pitcairn Court of Appeal and from there to the Privy Council in London on a range of issues. These included the sovereignty of the Pitcairn Islands, the promulgation of English law on the Island, delay, and other issues that they claimed were an abuse of process. Their appeals were finally dismissed by the Privy Council in a judgement handed down on 30 October 2006. This judgement stated that "infinite care appears to have been taken by all those

[3] www.fco.gov.uk, 23 November 2006, Lord Triesman, Overseas Territories Minister, eighth meeting of the Overseas Territories Consultative Council (OTCC) on 21 and 22 November.

[4] "Pitcairn museum shows Bounty treasures", by Nick Squires in Sydney, Telegraph, London, 31 August 2006.

involved to ensure that the investigation and the proceedings were conducted fairly. It is very much to the credit of the authorities, the legal representatives of the parties and those responsible for arranging the hearings in the courts below and before us that matters were handled so well. Clearly this involved the expenditure of considerable resources, and I commend those who were responsible for making the resources available. From my reading of the voluminous papers it has meant that every issue which could be raised on behalf of the appellants has been fully canvassed and justice has been done. It is reassuring that such care has been taken to achieve justice for a small community of limited means."[5]

29. The custodial sentences of three of the convicted men have begun in the Pitcairn prison, which is staffed by professional officers on contract to the Island from the New Zealand Department of Corrections. One further offender has been granted home detention by the Pitcairn Parole Board. The community-based sentences of the other two convicted men have also begun. The trials of two more Pitcairn men, Brian Michael John Young (resident in Australia) and Shawn Brent Christian (resident in New Zealand), took place in the Pitcairn Supreme Court sitting in Auckland in December 2006. Guilty verdicts were handed down on 9 January 2007. On 5 March, both were jailed after returning to Pitcairn, where they received sentences of six-and-a-half years, and three-and-a-half years, respectively. In the case of Brian Michael John Young, Chief Justice Charles Blackie said he was extending the sentence to the longest prison sentence yet because of his abhorrent attacks on girls aged from 7 to 15 over a long period of time in the 1970s.[6] A further New Zealand resident Pitcairner pleaded guilty to charges of indecent assault before the Pitcairn Supreme Court in November 2006. He was fined NZ$ 2,000. The extradition of a New Zealander is also still being sought on charges of rape and indecent assault.

30. The situation has been viewed with concern by the Islanders, since, among other things, it takes four men to handle the longboats, which take passengers to and from the Island. According to the administering Power, three of the men who received custodial sentences are able-bodied men who can assist in the handling of the longboats. In addition, prison regulations allow prisoners on the Island to work outside the prison under supervision and, in certain circumstances, to be temporarily released for employment. According to information provided by the administering Power, this will be a matter for the prison authorities to decide upon.

V. Future status of the Territory

A. Position of the territorial Government

31. The last statement made by a representative of the Island Mayor to the Pacific Regional Seminar on decolonization was made in Madang, Papua New Guinea, from 18 to 20 May 2004. It is summarized in the report of the Special Committee of 24 for 2004.[7]

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[5] Information provided by the administering Power.

[6] Deutsche Presse Agentur, 4 March 2007; Agence France-Presse, 5 March 2007.

[7] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 9* (A/59/23), chap. II, annex.

32. It should be noted, however, that with regard to self-determination, the representative reiterated that the people of Pitcairn did not fully understand all the possibilities or the significance of the various self-determination options that might be available to them. The attention demanded by the new projects mentioned above had also served as a diversion. Knowing that Pitcairn's constitutional review had been deferred until after 2006, he added that it seemed logical to precede this process with discussions on self-determination. To that end, he said that Pitcairn would gain maximum benefit in understanding its political future from a United Nations visiting mission. He added that Pitcairn also remained eager to develop, with the Special Committee and the Government of the United Kingdom, a work programme in accordance with the Committee's proposal of 2000 (see A/AC.109/2001/2).

B. Position of the administering Power

33. In a statement made on 24 April 2006 while visiting the Turks and Caicos Islands, the Overseas Territories Minister Lord Triesman took stock of the relationship between the United Kingdom and the Overseas Territories seven years on from the 1999 White Paper entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories",[8] and reiterated the United Kingdom's approach as follows:

> "As the White Paper made clear, the United Kingdom will always be ready to help any Territory become independent where this is an option, and if that is the clear and settled will of the people. The United Kingdom has no desire for any Territory to remain British against its people's wishes. We have no continuing colonial objectives.
>
> "However, if the people of a Territory wish to retain the British link, then the United Kingdom will continue to honour its responsibilities for it. But I am, and I should be, answerable to the United Kingdom Parliament for the Territories. As long as the United Kingdom retains those responsibilities, it needs to be in a position where it can discharge them properly. And that means that the United Kingdom needs to retain a sufficient level of powers to do this.
>
> "In this process, the Governor, who also represents the Territory to the United Kingdom Government, has a vital role. He or she must ensure, in partnership with the Territory Government, that high standards are maintained in key areas such as the public service, the police, the judiciary, finance, aviation and maritime security — indeed security generally — and human rights, in the interests of the peoples of the Territory as a whole.
>
> "In this context, it might be helpful if I set out the United Kingdom position on alternative forms of relationship, some of which I know have been discussed here in Turks and Caicos Islands in recent weeks. United Nations General Assembly resolution 1541 (XV) set out some options for the relationship between administering Powers and Territories, including independence, integration and free association. The United Kingdom did not

[8] "Partnership for Progress and Prosperity: Britain and the Overseas Territories", White Paper submitted to the House of Commons on 17 March 1999 by the United Kingdom Secretary of State for Foreign and Commonwealth Affairs; reproduced in A/AC.109/1999/1, annex.

vote in favour of that resolution, and does not regard itself as bound by it. Integration would mean the Turks and Caicos Islands or any of the other Territories becoming a full part of the United Kingdom, like the Isle of Wight. It would mean that the people of the Territory would have to pay United Kingdom taxes. And United Kingdom policy would apply in areas that have traditionally been the responsibility of the Territory Government; for example, education and health.

"I do not believe that this is an option that would find favour in the Territories. Nor does it in the United Kingdom. The option of free association is also unacceptable. As defined by the United Nations, it would mean the Territory drawing up its Constitution free from any outside involvement. The United Kingdom would retain all the responsibilities for the Territory, but would not be able to ensure that it had the powers to enable it to fulfil these responsibilities. Ministers answerable to government in Westminster cannot, and should not, put themselves in that position. So our aim is to work for a relationship with the Territory Government which satisfies the needs of both sides."[9]

34. Moreover, in a statement made at the 5th meeting of the Special Political and Decolonization Committee (Fourth Committee) during the sixty-first session of the General Assembly, the representative of the United Kingdom said that the criteria used by the Special Committee of 24 in its deliberation on whether a Non-Self-Governing Territory should be "delisted" were outdated and failed to take account of the way that relationships between the United Kingdom and its Overseas Territories had been modernized, in a way that was acceptable to both parties (see A/C.4/61/SR.5).

C. Action by the General Assembly

35. On 14 December 2006, the General Assembly adopted with a vote of 173 to none, with 4 abstentions, resolutions 61/128 A and B. Section VIII of resolution 61/128 B concerns Pitcairn.

[9] "A Successful Future", Triesman speech, Turks and Caicos Islands, 24 April 2006; see www.fco.gov.uk.